

PR#9833

SMOLEN, MICHAEL

3/27/2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

DEPOSITION OF MICHAEL DAVID SMOLEN, Ph.D.
TAKEN ON BEHALF OF THE DEFENDANTS
ON MARCH 27, 2009, BEGINNING AT 9:30 A.M.
IN STILLWATER, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

Mr. Robert Nance
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On behalf of the DEFENDANT-PETERSON FARMS, INC.:

Mr. Scott McDaniel
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REPORTED BY: Laura L. Robertson, CSR, RPR

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1 WHEREUPON,

2 MICHAEL DAVID SMOLEN,
3 after having been first duly sworn, deposes and says
4 in reply to the questions propounded as follows,
5 to-wit:

6 BY MR. MCDANIEL:

7 Q. Dr. Smolen, would you state your full name,
8 please, sir?

9 A. Michael David Smolen.

10 Q. Would you give us both your work and home
11 addresses?

12 A. Work address is 218 Ag Hall, Stillwater,
13 74078. Home address, 3409 South Washington Street,
14 Stillwater, 74074.

15 Q. All right. Thank you. Who is your
16 employer?

17 A. Oklahoma State University.

18 Q. What is your position?

19 A. I'm a professor of Biosystems and Ag
20 Engineering, and an extension appointment, 100 percent
21 extension.

22 Q. All right. Can you explain to us what your
23 job responsibilities are?

24 A. I serve as the water quality coordinator for
25 extension programs and division of agriculture and

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1 A. Most of the -- they have a lot of gravel, so
2 an unattended road would probably have more gravel on
3 it.

4 Q. In the Illinois?

5 A. In the Illinois, and it is local gravel,
6 pretty much. These are pretty fine textured soils in
7 this case, you could have anything from fine textured
8 to coarse in the Illinois River.

9 I would expect you would find some that look
10 like that.

11 Q. Okay. Flip a couple more slides over, and
12 you have a heading Erosion on Unpaved Rural Roads, and
13 your note at the bottom says, "Annual rates of erosion
14 can exceed 100 kilograms per meter of road, or about
15 200 tons per mile." Have you found that page?

16 A. Yes, I have got it.

17 Q. What is, generally what is the basis for
18 this, these erosion rates that you have identified
19 here?

20 A. I don't remember specifically on this one.
21 We had some numbers from this study, and I think they
22 are in this range.

23 Q. Obviously, sir, I have a particular interest
24 in the Illinois River Watershed, and I know this study
25 is not in the Illinois River Watershed. But if I want

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1 to translate this annual rate of erosion from dirt
2 roads from your study to the Illinois River Watershed,
3 is this 200 tons per mile, is that a reasonable range
4 for me to apply to the Illinois River Watershed dirt
5 roads?

6 A. It is probably an upper limit. I don't know
7 of any studies in there to really pin it down. I
8 expect the Illinois River is probably a little bit
9 less erodible than this area where we studied.

10 Q. But 200 would not be out of the question?

11 A. There are some places that you could
12 probably reach that, yes.

13 Q. And just following up on this prior comment,
14 you're not aware of any particular study of road
15 erosion in the Illinois River Watershed; is that
16 correct?

17 A. No, I'm not. That's correct.

18 Q. The next page you have got a chart there,
19 Erosion for Roads and Ditches Predicted by Computer
20 Model, and you have got paved, gravel and dirt and
21 some modeled erosion rates.

22 So even a paved road can result in erosion?

23 A. The paved road has a ditch associated with
24 it, and if the ditch is eroding, there will be
25 sediment production.